

AMENDED IN SENATE AUGUST 29, 2014

AMENDED IN SENATE AUGUST 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1415

Introduced by Assembly Member John A. Pérez
(Coauthors: Assembly Members Bocanegra, Frazier, Gray, and
Levine)

(Coauthor: Senator De León)

March 20, 2013

An act to amend Section 11340.5 of the Government Code, and to add Section 7109.5 to the Public Contract Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1415, as amended, John A. Pérez. Administrative regulations: corrosion prevention and mitigation projects.

(1) Existing law contains various provisions relating to contracts by a public entity for the performance of public works of improvement, including provisions for the payment of progress payments and the disbursing and withholding of retention proceeds.

This bill would require a public entity that awards a contract for construction, alteration, demolition, installation, repair, or maintenance work after January 1, 2017, that is paid for in whole or in part with state funds, to require contractors and subcontractors performing corrosion prevention and mitigation work to comply with specified standards to be adopted by the Director of the Department of Industrial Relations in consultation with the Department of Toxic Substances Control. ~~This~~ *The* bill would also exempt work on *sheet metal and ventilation systems*

and plumbing and piping ~~systems, systems, and precast concrete work that is performed off site, when the work is performed by specified persons, from the standards adopted under these provisions.~~

(2) The Administrative Procedure Act generally sets forth the requirements for the adoption, publication, review, and implementation of regulations by state agencies.

This bill would make technical, nonsubstantive changes to of the act provisions.

(3) Because this bill would require local entities to comply with additional contracting regulations for these projects, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California's water and transportation infrastructure needs
4 will continue to increase dramatically. The cost of maintaining the
5 health and well-being of California and Californians is directly
6 linked to the safety of its water pipelines and storage tanks, bridges,
7 roads, and industry. Ensuring this depends primarily on two factors:
8 (1) the performance of proper, timely preventive maintenance by
9 certified workers and (2) the extent and severity of structural
10 corrosion or other deterioration.

11 (b) According to a 2012 American Society of Civil Engineers
12 study, in the "1950s and 1960s, California spent 20 cents of every
13 dollar on capital projects. By the 1980s, that figure dropped to less
14 than five cents on the dollar. Current estimates put infrastructure
15 investment at around a penny on the ~~dollar~~. dollar." Currently,
16 2,978 of the 24,812 bridges in California (12 percent) are
17 considered structurally deficient and roughly 8,000 of them are

1 older than the recommended 50-year lifespan. Additionally,
2 corrosion was found to be at a critical level on the suspension span
3 of the new \$6.5 billion San Francisco-Oakland Bay Bridge.

4 (c) As California prepares for more than \$7 billion in
5 investments in the state's water infrastructure, preventative
6 measures like corrosion prevention applications should be a part
7 of all new construction, retrofitting, and maintenance work. This
8 protects against deterioration of the infrastructure itself, as well
9 as environmental degradation from leakage, breaks, or release of
10 toxic materials. When steel corrodes, heavy metals are released
11 into storage tanks, pipelines, or other structures, which is hazardous
12 in the case of drinking water.

13 (d) Corrosion prevention work is necessary for long-term
14 environmental protection. When a coating is properly applied, it
15 can last 10 to 20 years, depending on the product. When applied
16 incorrectly, repairs are necessary within 1 to 3 years, requiring
17 untold costs. Each time the structure surfacing needs to be repaired,
18 the existing coating must be removed. When this removal is not
19 conducted by a competent workforce, the surrounding environment
20 can be exposed to lead or hazardous materials contamination.

21 (e) The Society for Protective Coatings (SSPC) states that 80
22 percent of coating failures are due to human error. Whether it be
23 from improper surface preparation, improper coating selection,
24 improper applications, improper drying, curing, or overcoating, a
25 certified professional can help prevent these failures. When
26 certified by an independent 3rd party, such as NACE or SSPC,
27 there is assurance that experienced professionals will complete the
28 project on time and according to the industry specifications.

29 SEC. 2. Section 11340.5 of the Government Code is amended
30 to read:

31 11340.5. (a) A state agency shall not issue, utilize, enforce,
32 or attempt to enforce any guideline, criterion, bulletin, manual,
33 instruction, order, standard of general application, or other rule,
34 which is a regulation as defined in Section 11342.600, unless the
35 guideline, criterion, bulletin, manual, instruction, order, standard
36 of general application, or other rule has been adopted as a
37 regulation and filed with the Secretary of State pursuant to this
38 chapter.

39 (b) If the office is notified of, or on its own, learns of the
40 issuance, enforcement of, or use of, an agency guideline, criterion,

1 bulletin, manual, instruction, order, standard of general application,
2 or other rule that has not been adopted as a regulation and filed
3 with the Secretary of State pursuant to this chapter, the office may
4 issue a determination as to whether the guideline, criterion, bulletin,
5 manual, instruction, order, standard of general application, or other
6 rule, is a regulation as defined in Section 11342.600.

7 (c) The office shall do all of the following:

8 (1) File its determination upon issuance with the Secretary of
9 State.

10 (2) Make its determination known to the agency, the Governor,
11 and the Legislature.

12 (3) Publish its determination in the California Regulatory Notice
13 Register within 15 days of the date of issuance.

14 (4) Make its determination available to the public and the courts.

15 (d) Any interested person may obtain judicial review of a given
16 determination by filing a written petition requesting that the
17 determination of the office be modified or set aside. A petition
18 shall be filed with the court within 30 days of the date the
19 determination is published.

20 (e) A determination issued by the office pursuant to this section
21 shall not be considered by a court, or by an administrative agency
22 in an adjudicatory proceeding if all of the following occurs:

23 (1) The court or administrative agency proceeding involves the
24 party that sought the determination from the office.

25 (2) The proceeding began prior to the party's request for the
26 office's determination.

27 (3) At issue in the proceeding is the question of whether the
28 guideline, criterion, bulletin, manual, instruction, order, standard
29 of general application, or other rule that is the legal basis for the
30 adjudicatory action is a regulation as defined in Section 11342.600.

31 SEC. 3. Section 7109.5 is added to the Public Contract Code,
32 to read:

33 7109.5. (a) A public entity, as defined in Section 7200, that
34 awards a contract for construction, alteration, demolition,
35 installation, repair, or maintenance work after January 1, 2017,
36 that is paid for in whole or in part with state funds shall require all
37 contractors and subcontractors performing corrosion prevention
38 and mitigation work to comply with the standards adopted pursuant
39 to this section.

(b) Contractors and subcontractors performing contracts for construction, alteration, demolition, installation, repair, or maintenance work awarded after January 1, 2017, that are paid for in whole or in part with state funds shall, when performing corrosion prevention and mitigation work, comply with the standards adopted pursuant to this section.

(c) On or before January 1, 2016, the Director of the Department of Industrial Relations in consultation with the Department of Toxic Substances Control, shall adopt regulations establishing standards for the performance of corrosion prevention and mitigation work on public projects that reflect industry best practices. Such industry best practices shall include, but are not limited to, all of the following:

(1) Use of trained and certified personnel for surface preparation and application of protective coatings and linings to steel and concrete surfaces.

(2) Use of inspectors to ensure best practices and standards are met.

(3) A plan to prevent environmental degradation, including, but not limited to, careful handling and containment of hazardous materials such as lead paint.

(d) For purposes of this section:

(1) "Trained and certified personnel" means both of the following:

(A) To the maximum extent feasible, workers performing surface preparation and application of protective coatings and linings to steel and concrete surfaces who are classified as journey-level workers ~~and are~~ *shall be* certified by an organization generally accepted in the industry as meeting the NACE 13/ACS 1 standard or a similar standard that is generally accepted in the industry.

(B) Workers performing surface preparation and application of protective coatings and linings to steel and concrete surfaces who are classified as apprentices ~~and are~~ *shall be* registered in an industrial apprenticeship program approved by the Division of Apprenticeship Standards that provides training to meet the NACE 13/ACS 1 standard or a similar standard that is generally accepted by the industry.

1 (2) “NACE 13/ACS 1 standard” means the Society for Protective
2 Coatings/NACE International standard for an industrial coating
3 and lining application specialist.

4 (e) The standards adopted pursuant to this chapter shall not
5 apply to work on *sheet metal and ventilation systems or on*
6 *plumbing and piping systems or to precast concrete work that is*
7 *performed offsite when the work on these systems or precast*
8 *concrete work is performed by either:*

9 (1) Skilled journey persons who are graduates of an
10 apprenticeship program for the applicable occupation that was
11 either approved by the Chief of the Division of Apprenticeship
12 Standards pursuant to Section 3075 of the Labor Code or located
13 outside California and approved for federal purposes pursuant to
14 the apprenticeship regulations adopted by the federal Secretary of
15 Labor.

16 (2) Apprentices registered in an apprenticeship program for the
17 applicable occupation that was approved by the Chief of the
18 Division of Apprenticeship Standards pursuant to Section 3075 of
19 the Labor Code.

20 SEC. 4. If the Commission on State Mandates determines that
21 this act contains costs mandated by the state, reimbursement to
22 local agencies and school districts for those costs shall be made
23 pursuant to Part 7 (commencing with Section 17500) of Division
24 4 of Title 2 of the Government Code.